

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the terms and/or provisions of the controlling Agreement, specifically Rule 24, when on the date of December 17, 1982, they allegedly issued furlough notice to Claimants herein, such furlough notice not issued in accordance with the provisions of Rule 24.

2. That Carrier violated the provisions of Rule 33 of the controlling Agreement in connection with the instant claim.

3. That accordingly, Claimants, as follows, are entitled to recovery as per the original claim; claim continuous from the date of December 23, 1982, eight hours per day, five days per week, until resolved. Claimants: C. R. Constable, D. R. Robertson, J. O. Friend, C. E. Walbert, J. P. Coffman, C. E. Benson, P. L. Thrasher, C. E. Knippenberg, W. M. Azcot, J. A. Rohrbaugh, R. O. Evans, J. V. Weimer, E. T. Ridenour, Jr., V. E. Bowman, J. C. Stewart, C. E. Emerick, P. M. Davidson, J. L. Campbell, W. E. Bishop, Jr., J. D'Angelo, and R. E. Hamilton.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants held assignments at the Carrier's Cumberland Locomotive Shop. On December 16, 1982, the Carrier posted Notice of the abolishment of jobs and the furlough of all employees at the Cumberland Shop effective at close of business December 23, 1982 with the exception of 25 listed positions. Specifically, the Notice stated:

"NOTICE

TO ALL EMPLOYEES REPRESENTED BY SHOP CRAFTS AND
FIREMAN & OILERS ORGANIZATIONS:

Effective at the close of tour of duty on
Thursday December 23, 1982, the Cumberland Loco-
motive Shop will be closed, and the position of all
employees holding assignments at the Cumberland
Locomotive Shop will be abolished with the excep-
tion of the following:

<u>LOCATION</u>	<u>SHIFT</u>	<u>JOB NO.</u>	<u>OCCUPATION</u>
* * *			

ALL employees shown on the Seniority Roster
stand to be effected, except seniority employees on
respective roster in equivalent number, to number
of positions to be retained at the Cumberland Loco-
motive Shop.

Agreement was made by Management and all Craft
Representatives that individual furlough notices
are not being required.

Effective at 7 a.m., Monday, January 3, 1983,
all employees suspended by the above, will be
restored and should report to their regular assign-
ment held at the time of suspension.

/s/H. W. Livengood
H. W. LIVENGOOD
General Plant Manager

cc: ALL COMMITTEEMEN
ALL BULLETIN BOARDS"

On December 17, 1982, the Carrier posted an amended Notice that all
positions would be abolished effective December 23, 1982, and would be re-
stored effective January 3, 1983. That Notice stated:

"FURLOUGH NOTICE
Amended 12/17/82

TO ALL EMPLOYEES REPRESENTED BY SHOP CRAFTS AND
FIREMAN & OILERS ORGANIZATIONS -

Effective at the close of tour of duty on THURSDAY, DECEMBER 23, 1982, the Cumberland Locomotive Shop will be closed, and the position of all employees holding assignments at the Cumberland Locomotive Shop will be abolished.

Agreement was made by Management and all Craft Representatives that individual furlough notices are not being required, and the furlough is being handled in this manner.

Effective at 7 a.m., MONDAY, JANUARY 3, 1983, all employees suspended by the above, will be restored and they should report to their regular assignment held at the time of suspension.

/s/ H. W. Livengood
H. W. LIVENGOOD
General Plant Manager

cc: ALL COMMITTEEMEN
ALL BULLETIN BOARDS"

Both Notices were posted by the Carrier after meeting with the various Representatives of the Shop Crafts at the Cumberland Locomotive Shop. Present at this meeting on behalf of the Organization was Committeeman C. E. Walbert who has served in a Representative capacity for the Organization at the Cumberland Shop for more than 20 years.

By letter dated February 8, 1983, the Organization's Local Chairman filed Claim on behalf of the Claimants contending that he, as Local Chairman, did not receive copies of the amended furlough Notice. Further, the Local Chairman stated in the letter that with respect to the statements in the Notices concerning Agreements made by the Craft Representatives regarding the handling of the furlough, he, as the Organization's Local Chairman, was not invited to any meeting to discuss the furlough. The Claim further disputed the validity of the posted furlough Notices under Rule 24 of the Controlling Agreement since the employees' names were not listed on the Notices, the standard form required by Rule 24 was not used, and the Local Committee was not given a list of the employees affected. The Claim concluded with the language "Based upon the above facts of this being an improper notice, this is a continuous claim until settled."

After the Carrier's General Plant Manager denied the Claim and the Organization appealed to the Carrier's Manager of Labor Relations, the appeal was denied at that level by letter dated May 10, 1983. In denying the Claim, the Carrier, in referencing the Claim, stated that the Claim submitted by the Organization was for "five (5) days' pay at the straight-time rate account allegedly furloughed without a five-day advance notice in violation of Rule 24 of the Shop Crafts Agreement."

The Organization contends that procedurally, Rule 33 of the Controlling Agreement has been violated since no Claim was submitted to the Carrier for "five (5) days' pay at the straight time rate" but that its Claim was "continuing;" therefore, the Carrier did not respond to the Claim. With respect to the merits of the Claim, the Organization contends that the furlough Notices violated Rule 24 of the Controlling Agreement and that any participation by the Local Committeeman in meetings prior to the posting of the furlough Notices does not permit the Carrier to violate the terms of the aforementioned Rule.

With respect to the Organization's contention that the Carrier did not comply with Rule 33 of the Controlling Agreement by the manner in which it responded to the Claim, after examination of the correspondence in the record, we must reject the Organization's argument. The Carrier's May 10, 1983, response to the Organization's Claim which the Organization characterized as "continuing" does state that the Claim was for five days' pay. However, such a discrepancy does not, in this case, warrant a conclusion that the Carrier did not respond to the Claim within the required time limits. The Carrier's response references the prior correspondence between the parties, specifically names the Claimants, and details the positions concerning the dispute. The Carrier referred to the Claim as one for five days' pay since it interpreted the Claim to be for such a period in the event the five day prior Notice provisions of Rule 24 were deemed to have been violated. Based on the above, it cannot be said that the reference to five days' pay rather than a continuing Claim is sufficient for us to conclude that the Carrier did not respond to the Claim. Quite the contrary, a full and complete response was given.

With respect to the merits of the Claim, an examination of the record before us, and considering the specific set of facts presented herein, also does not permit a sustaining of the Claim. In pertinent part, Rule 24 states as follows:

"RULE 24

Reduction in Force and Recall Procedure.

(b) (1) Five working days' advance notice will be given to employees affected before the abolishment of positions or reduction in force, and list of employees affected will be furnished to the local committee using the STANDARD FORM shown below under paragraph (j).

* * *

(j) Except in cases of emergency force reductions as covered by Section (b)(2) and (b)(3) of this rule, the following STANDARD FORM will be used to notify all concerned of position abolishments and force reductions.

STANDARD FORM TO BE USED WHEN ABOLISHING
POSITIONS AND REDUCING FORCES

Location

Date

To all Concerned:

The following position(s) will be abolished.
Employees whose positions are abolished will be
governed by provisions of Rule 24:

Title of Position

Incumbent

Effective: _____

Time

Date

The following employee(s) stand to be affected
as a result of force reduction:

Supervisor in Charge

cc: Local Committee."

An examination of the Notices posted by the Carrier on December 16 and 17, 1982, shows that they were not in strict conformity with the form required by Rule 24. A reading of the two Notices together conveys the general information necessary as is required by the Form in Rule 24. The Notices were posted in excess of five days prior to the effective date of the furlough. The effective dates of the furlough, the job classifications involved and the fact that all employees would be affected by the furlough can readily be ascertained by the information in the Notices.

Were the facts in the record simply that the procedure set forth in Rule 24 was not adhered to by the Carrier, the Organization would have a much stronger Claim. However, in the Notices, reference is made to the fact that by agreement of the Carrier and all Craft Representatives "the furlough is being handled in this manner." A close reading of the Organization's Submission and the evidence in the record shows that there is no dispute of the fact asserted that, prior to the posting of the Notices, a meeting was held

between the Carrier and the Shop Crafts' Representatives, including the Organization herein represented by Committeeman Walbert (who has been the Organization's Committeeman in the Locomotive Shop for more than 20 years). In its Submission, the Organization seems to question whether Walbert was appraised with full knowledge of any changes in strict adherence to the contractual form of Rule 24 and whether or not Walbert actually concurred with such changes. Aside from the foregoing suggestion in the Organization's Submission, there are no facts to show that Walbert was not aware of an agreed change in procedure or that he did not agree to the same. It is axiomatic that the burden of proving all essential elements of its Claim lies with the Organization in this case. Second Division Awards Nos. 6893 and 6369. A close reading of the facts in this record shows that the requisite burden has not been carried by the Organization. The assertions in the Organization's Submission are unsupported in the record.

In our opinion, the fact that the Local Chairman did not attend the meeting in question and did not specifically agree to any varying of the furlough procedure does not require a different result in light of the presence of the Organization's Committeeman - a Committeeman with such a long tenure in that position. In its Submission, the Organization concedes that Walbert is a "recognized representative of the carman craft." The fact that Committeeman Walbert is a Claimant in this matter, by itself, similarly cannot change the result. Walbert's status as a Claimant is unexplained in the record and cannot be used to infer or establish that no agreement was reached to vary the Notice procedure for furloughs as was done in this case.

Similarly, the fact that the Local Chairman may not have received copies of the December 17, 1982, amended Notice is not dispositive of this case in the Organization's favor. The form in Rule 24 only requires that notice be given to the "Local Committee" in general. There is no requirement that proof of service must be shown to have been made personally upon the actual Local Chairman. The Organization does not seem to claim that the Local Chairman did not receive the December 16 Notice announcing the furlough of all but 25 positions. The Organization raises issues concerning receipt of the amended December 17 Notice. Considering that both Notices were posted and copies of both were given to "all committeemen," the fact that the Local Chairman may not have received a copy of the second Notice amending the original Notice in this case to include all positions in the furlough (and keeping in mind that the record facts do not reveal a factual dispute sufficient to find that there was not an agreement to vary the furlough procedure) cannot change the result reached herein.

Similarly, the contention made by the Organization that the specific names of those being furloughed were not conveyed to the Organization in the actual Notice will not change the result. After the second Notice was posted and sent to the Committeemen, the Organization was on notice that "the position of all employees holding assignments at the Cumberland Locomotive Shop will be abolished" until those positions were to be restored on January 3, 1983. Under the circumstances of this case, and in light of the foregoing discussion, such was sufficient.

Finally, there is no evidence in the record to show that the procedure utilized in this case in any fashion prejudiced the rights of any employee. The record reveals that sufficient notice was given and posted in excess of five days prior to the furlough in accord with agreement of a Representative of the Organization. Individual Notice of such a furlough is no longer required. Second Division Awards Nos. 9733; 6614.

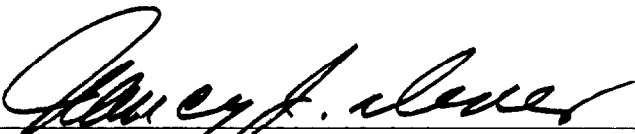
Therefore, based upon this record, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1986.

